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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

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on AUG 3, 2007

Signature

Typed or printed name

ROBERT J. HARTER

Application Number

10/813, 421

Filed

3/30/2004

First Named Inventor

MICHAEL R. HARTER

Art Unit

3626

Examiner

NGUYEN, TRAN N.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number

32,031

Signature

ROBERT J. HARTER

Typed or printed name

608-519-1400

Telephone number

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

8/3/2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒*Total of ONE forms are submitted.

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN THE APPLICATION OF: Michael R. Harter et al GROUP: 3626
U. S. SERIAL NO: 10/813,421 EXAMINER: Nguyen, Tran N.
FILING DATE: March 30, 2004 Atty. Doc. No: TBM
FOR: Method for Identifying Allergens and Other Influencing Agents That may Cause a Reaction

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Robert J. Harter, Reg. 32,031 8/3/2007
date

La Crosse, Wisconsin
August 3, 2007

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
Alexandria, VA 22313-1450

This is in response to the Final Rejection mailed May 4, 2007. The applicants requests review of the Final Rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal in compliance with 37 CFR 41.31. The review is requested for the reasons stated on the attached sheets.

Applicant's Reasons for the Requested Review

The applicants claim a novel method for identifying a person's allergies. The method eliminates the need for using what are perhaps the two most common types of allergy testing: 1) skin-prick test, and 2) elimination diet (see pg. 2, line 26 – pg. 3, line 13 of the subject application).

The rejection of the applicant's claims rely on two references: Berkkow and Evans. Berkow proposes the elimination diet (Berkow, pg. 329, paragraph entitled "Diagnosis") or the skin-prick test (Berkow, pg. 650, paragraph #4). Evans teaches a computerized system for maintaining medical records. The Evans system has nothing to do with determining a person's allergies, it just keeps a computerized record of them.

With the applicants' invention, a patient enters a daily log of whatever foods they normally eat and any reactions they may experience. The method involves no skin-prick test nor requires any prescribed diet such as an elimination diet. The patient just records whatever they happen to eat. After recording several weeks or months of data, the applicants' program automatically analyzes the information to determine if any significant mathematical correlations exist between a reaction and any of the foods, whereby a high positive correlation identifies which foods are most likely causing the reaction.

This concept is defined in claim 1, which specifically recites: "computing a plurality of correlations corresponding to the plurality of possible influencing agents as each of the plurality of possible influencing agents relate to the reaction; and based on the plurality of correlations, determining and displaying the suspect influencing agent." The cited prior art fails to disclose this element of the applicants' invention. Thus, this is a clear omission of an essential element needed for a prima facie rejection.

One factual error of the rejection pertains to the applicants' Claim 1. The Examiner states "Berkow also teaches that patterns of symptoms may be correlated to environmental exposure...;" however, Berkow does not say this. On pg. 650, paragraph 4, Berkow actually says, "results are correlated with the pattern of symptoms and related to environmental exposures." Berkow's statement is a little confusing, but it appears that

Berkow is saying that the results are correlated with the pattern of symptoms, and the results are related to environmental exposures. The applicant is having difficulty making sense of this, but the fact that Berklow clearly states, "the results are correlated with the pattern of symptoms" appears to mean that the test results and the symptoms are compared for correlation, whereas in the case of the applicants' invention, the exposures and the symptoms are compared for correlation – the difference being: Berkow uses the skin prick test, and the applicant does not.

For these reasons and others mentioned in the applicant's response submitted on March 1, 2007, the applicants submit that the final rejection mailed May 4, 2007 relies on clear factual errors and omissions of essential elements needed for a prima facie rejection.

Respectfully submitted,



Robert J. Harter (Reg: 32,031)
Patent Agent for Applicants
608-519-1400